

UNREDACTED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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UNITED STATES OF AMERICA	)	
	)	
VS	)	NO.1:19-cr-10040
	)	JACKSON, TENNESSEE
	)	
ALEXANDER ALPEROVICH,	)	
JEFFREY W. YOUNG, JR., and		
ANDREW RUDIN		

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REPORT DATE

MAY 21, 2020

BEFORE THE HONORABLE J. DANIEL BREEN,  
UNITED STATES DISTRICT JUDGE

KRISTI HEASLEY, RPR  
OFFICIAL COURT REPORTER  
U.S. COURTHOUSE, SUITE 450  
111 SOUTH HIGHLAND AVENUE  
JACKSON, TENNESSEE 38301

UNREDACTED TRANSCRIPT

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EXAMINATION INDEX  
NO TESTIMONY OFFERED

UNREDACTED TRANSCRIPT

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EXHIBITS

NO EXHIBITS MARKED

UNREDACTED TRANSCRIPT

1 THE COURT: All right. This is in the  
2 matter of U.S. versus Jeffrey Young, Dr. Alperovich and  
3 Dr. Rudin, 19-10040. We're here for a report date.

4 Just to give you a little bit of an update  
5 on kind of where we are as far as the courthouse is  
6 concerned. We are closed until the end of this month.  
7 We will -- as it stands, we will be opening in limited  
8 fashion on June 1st. Kind of a Phase I opening.

9 It does not entail jury trials yet. It's  
10 going to be more or less probably for matters like  
11 possibly some sentencings, change of pleas, initial  
12 appearances, things of that nature, but no trials yet.  
13 We're working on that; although, an official, I guess,  
14 protocol has not been established yet.

15 So all I can tell you right now is the  
16 court is working on it. And hopefully we'll have  
17 something relatively soon, but we don't have it yet.

18 But let's turn to this matter.  
19 Mr. Ferguson, just as an update, I think maybe your  
20 associate was here the last time that we did have a  
21 report date. You weren't here. And I, frankly, failed  
22 to make inquiry about the pending motion for change of  
23 venue in this matter, which I believe you had filed.

24 Is that still a matter that you wish to  
25 request? Or what is the status of that situation, sir?

1 MR. FERGUSON: It is, Your Honor,  
2 especially in light of the previous ruling by the Court  
3 this week that actually referenced social media postings,  
4 in that there are somehow pictures and photos of  
5 Mr. Young being distributed from the Madison County folks  
6 who have taken a interest and shine into making sure that  
7 he goes to jail.

8 Not really sure how they were able to get  
9 their hands on surveillance footage, what appears to be  
10 surveillance footage from the Federal Detention Facility.  
11 But it was just recently posted on one of the local  
12 websites that stirs up interest in this case that's  
13 located mostly in Madison County.

14 So I would --

15 THE COURT: I think actually -- I think --  
16 if I may interrupt you.

17 I think actually the government may have  
18 attached that photograph to their brief in opposition to  
19 your client's request for --

20 MR. FERGUSON: If they did --

21 THE COURT: -- release.

22 MR. FERGUSON: -- somebody took it and put  
23 it online in the Jackson community.

24 THE COURT: I don't know. But I think  
25 that's where it came from originally. At least from my

1 standpoint.

2 MR. FERGUSON: Okay. Well, it's still a  
3 matter of public interest, and it's still generating  
4 substantial online discussion to the point where it's  
5 unfair.

6 THE COURT: Ms. Payerle, are you the only  
7 AUSA on here today, or is there other -- I don't think  
8 there is anybody else.

9 MS. PAYERLE: No, Your Honor, I'm the only  
10 one. We had read your order to say that only one of us  
11 should show up. So that's me.

12 THE COURT: Okay. I just wanted to make  
13 sure.

14 MS. PAYERLE: Yes, sir. Yes, sir.

15 THE COURT: We haven't met in a while,  
16 so -- on this case, simply because of your problems with  
17 the pandemic. But what -- I really have forgot.

18 But what is the government's position  
19 regarding a request for a change of venue?

20 MS. PAYERLE: Your Honor, the government  
21 doesn't oppose it and will leave it to the Court's  
22 wisdom.

23 THE COURT: Okay. Again, just simply  
24 because it's been a passage of time, I'll ask again.

25 Counsel for Dr. Alperovich. Is that

1 Mr. Ross Johnson?

2 MR. JOHNSON: Mr. Johnson.

3 THE COURT: Mr. Johnson. Okay.

4 Mr. Johnson, what is the position -- I apologize.

5 What is your client's position in that  
6 matter?

7 MR. JOHNSON: Well, Mr. Massey and I, who  
8 also represents Dr. Alperovich, have conferred. And we  
9 are close to making a final recommendation to our client  
10 about that. We need to talk to him a little bit more  
11 about that issue.

12 Because, obviously, he's a well-respected  
13 cardiologist in the Jackson area. And his situation is a  
14 bit different than Mr. Young's. But we want to have just  
15 a little bit more time, Your Honor, to confer with our  
16 client.

17 And if you could give us perhaps a week or  
18 at most two weeks to file a notice with the Court on our  
19 position concerning the venue change.

20 THE COURT: What about Dr. Rudin's  
21 counsel? Is that Mr. Sanan?

22 MR. SANAN: Yes, Judge. Judge, we  
23 previously joined in the motion by Mr. Ferguson, and we  
24 still stand by that.

25 THE COURT: Okay. I apologize. Like I

1 said, it's been a while since we actually gathered and I  
2 just could not recall. So I appreciate reminding me of  
3 that.

4 Mr. Johnson, I'll give you a week.  
5 Obviously, we have plenty of time to give that  
6 consideration, so I think a week would be more than  
7 sufficient for that purpose.

8 MR. JOHNSON: Thank you, Your Honor.

9 THE COURT: Presently the case is set in  
10 September, on the September 14th. To be blunt about it,  
11 I don't know how else I can say, I don't know even --  
12 even if the Court granted the motion, I don't know  
13 whether it could go on that date or not. I don't know  
14 whether we'll be in a position to actually proceed to  
15 trial on that date, Mr. Ferguson and the other counsel.  
16 It's just unclear at this time.

17 Again, I know there is some support being  
18 done by a committee of my colleagues to try to establish  
19 protocols and things of that nature. But as you might  
20 image, you know, it's difficult, simply because of the --  
21 we're trying to kind of coordinate working with the local  
22 health authorities and things of that nature. But we  
23 haven't set up any specific protocols yet. And so that's  
24 kind of where we are.

25 We can keep the date on that at that point

1 to see where we're going to be. But I can't guarantee  
2 you. I know that doesn't give anybody here on the, in  
3 the Skype, doesn't give you any solace about not knowing  
4 exactly where we're going to be going. But I just can't  
5 tell you.

6 We could put it off longer, but that may  
7 not be something everybody at least at this point is  
8 agreeable to. But by the same token, I can't guarantee  
9 that date is going to go.

10 MR. FERGUSON: Your Honor, if I may.

11 THE COURT: Yes, sir.

12 MR. FERGUSON: This is Mr. Ferguson for  
13 Mr. Young.

14 Obviously, this lockdown has been very  
15 difficult for us to prepare, since we've had no ability  
16 to communicate with him. And Mason just last week got  
17 one, I believe it's one, maybe more, iPads that are  
18 limited and having to be shared between panel attorneys  
19 and the Federal Public Defender's Office.

20 Most of the material that has been sent to  
21 Mr. Young has been in digital form. And because of the  
22 lockdown, because he's housed in K pod, because he's a  
23 high risk detainee, he has no access, at least for the  
24 last, I don't know, six weeks, two months, whatever it's  
25 been, has had no access.

1 A majority of the material has been  
2 digitized. This is a very, very extensive -- has a very  
3 extensive amount of documents and material that have to  
4 be gone through with Mr. Young.

5 So I know that he is feeling quite anxious  
6 about that. And I definitely agree with him. I join in  
7 with his angst at the difficulty of this lockdown at the  
8 facility has caused for he and I to meaningfully concur  
9 over his trial strategic. So I understand.

10 And having been setting a lot of trials in  
11 the western section, they are piling up fast. I know  
12 they're trying to give priority to in-custody clients.  
13 Obviously, one of those cases where Mr. Young's ability  
14 to assist counsel is probably much more important than it  
15 would be say in the normal run of the mill Title III drug  
16 conspiracy case, where it's either you're right on the  
17 street or you're on the pole camera or you're not.

18 This is a very nuanced form of a drug case  
19 that requires he and I to have adequate ability to have  
20 private attorney-client communication.

21 I say that, not asking for anything, I'm  
22 just saying that. I hear the Court saying that it's  
23 concerned about being able to keep that date. Depending  
24 on when we get people off lockdown at Mason, I'm not  
25 feeling real comfortable with that date either.

1                   So I just wanted to go ahead and say that  
2 now while we're all together. Kind of let the group know  
3 that that's our issue right now.

4                   THE COURT: Yes, sir.

5                   MR. FERGUSON: Thank you, Judge.

6                   THE COURT: Any other defense counsel wish  
7 to weigh in?

8                   MR. JOHNSON: I would like to weigh in,  
9 Your Honor, on behalf of Dr. Alperovich.

10                   I have severe concerns about this case  
11 being able to be tried in September, even in the absence  
12 of the pandemic situation that we're in right now.

13                   And the fact that we're in a pandemic  
14 situation, and the Court is having to deal with those  
15 issues, just piles on top of some of the other things  
16 that we're having to deal with right now in this case.

17                   We filed a, some discovery requests that's  
18 in the record. There is a fairly significant amount, I  
19 believe, of additional discovery materials that are still  
20 in the process of being produced.

21                   If the Court will recall, when we had the  
22 report date back in November, which is the last time we  
23 were all together, one of the issues was all of the  
24 materials that were taken out of Mr. Young's clinic,  
25 which is the medical practice that's at issue in this

1 entire case, the electronic materials that were taken out  
2 and seized pursuant to search warrant. And those had not  
3 been produced yet. And the government was in the process  
4 of producing those to us in November.

5 We received those in December, and then  
6 received some supplemental materials after that, to  
7 include some cell phone images. And those are detailed  
8 in the discovery letter that's in the record for the  
9 Court.

10 And the government produced those  
11 materials in sort of the raw extraction form, without a  
12 way for to us review those absent manipulating it in some  
13 way or getting software to manipulate --

14 THE COURT: Mr. Johnson, excuse me just a  
15 second.

16 Is Mr. Young -- I don't see him.  
17 Mr. Young, are you still on the -- can you hear me, sir?

18 MR. JOHNSON: I think we lost him.

19 THE COURT: I think we have lost him.  
20 Sonya, can you check to see...

21 THE CLERK: Yes, sir. Give me just a  
22 moment, please.

23 THE COURT: Yes, sir. I just happened to  
24 look up, Mr. Johnson. If you will hold your thought  
25 there just a second.

1 MR. JOHNSON: I will.

2 THE COURT: Technology can be a wonderful  
3 thing, when it works.

4 (Pause in Proceedings.)

5 THE COURT: Are you having any luck?

6 THE CLERK: No, sir. I'm dialing into the  
7 facility now and no one is answering.

8 (Pause in Proceedings.)

9 THE CLERK: Judge Breen, I just had an  
10 officer answer the phone and said he would go to the room  
11 where Mr. Young is located and do a reconnection. It  
12 will take just a couple of minutes.

13 THE COURT: Okay.

14 FEMALE VOICE: Judge Breen, we are back on  
15 at Mason. I apologize for that. Our connection went  
16 down.

17 THE COURT: Okay. We're not getting any  
18 -- is Mr. Young there?

19 DEFENDANT YOUNG: Yes, sir.

20 THE CLERK: We don't have video on him  
21 yet.

22 THE COURT: We don't have video.

23 FEMALE VOICE: It's showing our picture on  
24 this side.

25 MR. SANAN: Judge, this is Mr. Sanan. I

1 can actually see Mr. Young.

2 MR. JOHNSON: I can too, Your Honor.

3 THE COURT: Okay.

4 MS. PAYERLE: I can as well.

5 THE CLERK: Ask Mr. Young to speak,  
6 please.

7 DEFENDANT YOUNG: Yes, ma'am. I'm here.

8 THE COURT: Okay.

9 DEFENDANT YOUNG: Can you hear me now?

10 THE COURT: We can hear you. There he is.

11 MS. PAYERLE: I believe, Your Honor, if I  
12 may, there is a little pin icon in the top right corner  
13 of the picture. And if click that, you should be able  
14 keep him up there.

15 THE COURT: There he is. He's on now.  
16 We've got him. All right.

17 Mr. Johnson, you were discussing about the  
18 discovery, some electronic discovery I believe. So  
19 hopefully you can pick up where you left off.

20 MR. JOHNSON: Thank you, Your Honor. Yes,  
21 sir. I'll pick up where I left off.

22 So the bottom line is those materials were  
23 provided in raw format or native format, and were not  
24 produced in a format where they had already been  
25 processed for searching.

1                   And so we had a discovery conference that  
2 we organized with counsel for the government to discuss  
3 through some of these things. There were still certain  
4 items that had not been produced.

5                   For example, we still, until just a few  
6 weeks ago, did not have the search warrant applications  
7 for the clinic that's at issue in this case. And we  
8 received a supplemental discovery production from the  
9 government, to include some of the cell phone materials.

10                  I'll give you an example. One of which is  
11 the cell phone of the office manager for Mr. Young at the  
12 PreventaGenix Clinic, Ms. Christy Gutzgell (phonetic).  
13 But we got those. And I believe those materials,  
14 particularly salient for my client.

15                  And then are awaiting production from the  
16 government of government's processed version of the  
17 electronic materials seized out of the clinic. And the  
18 processed version is, in essence, a breaking open of the  
19 raw image files that were copied from the electronic  
20 materials. And so that way the material can be viewed  
21 and reviewed.

22                  But something else the government is in  
23 the process of doing is giving us an e-discovery load  
24 file. Because we found out that what the government is  
25 doing -- and they apparently may have already created it.

1 But they have created an e-discovery database in this  
2 case so they can search through these materials.

3 We are in the process, if we do not  
4 resolve these issues among the parties, we are in the  
5 process of having to raise some of these issues with the  
6 Court. I'm not raising them right now, but I am letting  
7 the Court know that that could be forthcoming.

8 Another example is the government made  
9 expert disclosures in April, and has made some  
10 supplemental disclosures concerning the experts. And I  
11 have some concerns about the completeness of those  
12 disclosures under the rules.

13 And once again, if we cannot resolve those  
14 issues among the parties, then we'll have to address  
15 those with the Court.

16 I think a significant issue is going to  
17 be, if the government a year after indictment, or close  
18 to a year after indictment, is in the process of  
19 databasing these materials, then that creates a real  
20 concern for us to have equal access and ability to review  
21 the materials consistent with Rule 16.1 and the  
22 e-discovery principles that can apply in criminal cases  
23 of this nature.

24 So I'm really just bringing that to the  
25 Court's attention so we can think a little bit about

1 scheduling here. And so if we are getting ready to get  
2 the raw materials that from my count are from at least 15  
3 different electronic devices that were seized out of this  
4 medical clinic, I don't know how I can go through all of  
5 that, and the phones that were imaged, and perform the  
6 necessary defense function of following up on any leads  
7 concerning those materials, integrating those materials  
8 into the defense theory, determining what we would use,  
9 what we would not use, all of the critical functions of  
10 defense in the case, and much less prepare for and  
11 conduct any hearings, and to include pre-trial motions  
12 that are resultant from those materials.

13 And we are at the end of May now, closing  
14 in on the end of May, so effectively that's June, July  
15 and August, 3 months, if I had the materials now, and I  
16 don't have them yet, to get ready for a complex trial,  
17 that from our client's perspective turns on a lot of  
18 medical judgment, medical supervision issues, and what he  
19 was told and what he was not told and what he was  
20 provided and not provided.

21 So for those reasons, Judge, I have real  
22 concerns about us being able to even keep that September  
23 date on the calendar. And I would suggest -- it could be  
24 helpful in managing this case if knowing what still has  
25 to be done -- perhaps if we picked a realistic date and

1 maybe -- everything is uncertain given the pandemic, but  
2 maybe we can try to pick something that factors in some  
3 of that uncertainty.

4 THE COURT: Ms. Payerle, I would like to  
5 hear from you.

6 Obviously, this concerns the Court that  
7 we're at this juncture, and possibly some of the matters  
8 that should be turned over have not either been or maybe  
9 not be in a format that's somehow usable.

10 What does the government say?

11 MS. PAYERLE: Judge, I'm happy to address  
12 every one of those issues that Mr. Johnson raised.

13 I'm in a little bit of an acquired  
14 position, because he hasn't raised them in any kind of  
15 Motion to Compel or a brief yet. So we haven't had the  
16 chance, obviously, to brief them. But I suppose to sort  
17 of take them one by one.

18 The Court set us a deadline last November  
19 to do our expert disclosures in April. We did that. We  
20 believe we have complied with Rule 16.

21 We had a discussion with Mr. Johnson a  
22 couple of weeks later. He said, hey, I have some  
23 concerns. We might want some more information about some  
24 of your experts.

25 I said, Mr. Johnson, if you would like to

1 ask me more information about the experts, if there is  
2 something you feel you're missing, if there is more  
3 information I can provide you, you know, let me know. I  
4 have not heard from him, so I'm unaware of what  
5 additional information he feels he's entitled to.

6 From our perspective, our expert  
7 disclosures are complete. And I'll either await his  
8 phone call or a brief so that I can, you know, respond,  
9 or provide the information if he wants it.

10 As to the electronic discovery, we did  
11 brief that in December. When discovery -- when computers  
12 are taken out of the practice, they're taken as image  
13 files. Those files can be read in their sort of native  
14 format by most sort of litigation support operations of  
15 which a firm as prestigious as Mr. Johnson's surely has a  
16 relationship. And it is the easiest way to review those  
17 computers, because there is no mixing of those files.

18 In other words, you can plug in a computer  
19 image into a FTK viewer -- I believe they're even  
20 available on line -- and you can search through the  
21 computer as the user had it in their own system. Now  
22 that's what we gave them first thing in December after  
23 our meeting in November.

24 At the end of April, the last week of  
25 April, so four months later, we got a letter, the one

1 that Mr. Johnson filed with the Court, saying, we don't  
2 want it in that format, we want it in a different format.  
3 We can't read that format.

4 So we all got on the phone. And I said,  
5 okay, well, you know, we are just now, we, the  
6 government, are just now in the process of actually  
7 getting that and only that into a database.

8 To answer Mr. Johnson's questions for the  
9 second time, I've already answered it for him, we are not  
10 databasing anything else, only that. So we are putting  
11 that stuff in a database. And so I offered then to give  
12 it to him in that format. That databasing process was  
13 finished a couple of weeks ago.

14 There is queue in our litigation support  
15 area in the queue. We put them at the top of the list  
16 for priority to produce. They've given us, in the new  
17 format they've given us some drives to put that stuff on.

18 But, Judge, in the meantime, because it's  
19 now in a database format that I can review, I've done  
20 some searches. And I believe that under Rule 16 -- not  
21 only have we already given it to them in a readable  
22 format, but under Rule 16 I think there is truly only a  
23 few dozen documents that would even be discoverable.

24 So the documents that we're providing  
25 them, these many, many computers worth of documents, is

1 mostly junk e-mails, image files, and other things that  
2 have absolutely nothing to with this case, now that we've  
3 had a chance to kind of search it and narrow down the  
4 scope of it.

5 And so I have offered -- and, in fact, I  
6 told Mr. Johnson that and Mr. Sanan that as recently as  
7 this morning. I said, look, I just don't think there is  
8 a lot in here that you guys are even entitled to.

9 So one of the ways that we can short  
10 circuit any of this is for me to simply comply with Rule  
11 16, and do my diligence in the database, and give them  
12 the relatively small universe of documents that I think  
13 is even tangentially connected to this case. And that  
14 would, for example, eliminate the tens of thousands of  
15 e-mails from vendors like Toys R Us or WebMD -- these are  
16 the blasts that people get on their work e-mails a lot --  
17 and constitute the vast majority of the information in  
18 those databases.

19 So I'm happy to do that as well. We could  
20 get that to them relatively quickly. Rule 16 does not  
21 require us to give them an open file, it requires us to  
22 give them information related to their defense. And I'm  
23 happy to do that.

24 I do not believe that this stuff that  
25 we've already produced and that we're now reproducing in

1 a new format is even really mostly relevant to the case.  
2 So that's as far as that goes.

3 As far as the -- so in other words, Judge,  
4 I'm basically saying that the discovery situation is not  
5 nearly as dire as Mr. Johnson is making it out to be. We  
6 have met and conferred productively on many occasions.

7 As far as I'm aware, all of the issues are  
8 resolved, except for this one small issue of how do I  
9 turn over a couple of dozen documents out of these  
10 computers that are going to be relevant to their defense?  
11 Whether they want the whole database of junk e-mails or  
12 whether they would prefer that I just pull out the ones  
13 that are relevant.

14 Mr. Sanan and I actually have a call next  
15 week where we're going to brainstorm ways to narrow that  
16 universe. He's going to give me some search terms. And  
17 maybe we can just find a way to just give him what he  
18 wants out the database in a way that he can use it.

19 I have made the same offer to Mr. Johnson.  
20 I'm happy to do it with him as well.

21 But the point is, there really -- I mean,  
22 there really isn't anything of substance that hasn't been  
23 turned over at all in one form or another. And all we're  
24 doing now is working diligently to get them documents in  
25 the format that they want them.

1                   There are two categories of discovery that  
2 are remaining. And those categories are, number one,  
3 discovery that is in the process of being created. And  
4 I'll give you an example.

5                   THE COURT REPORTER: Ms. Payerle, Ms.  
6 Payerle, hang on. Are you guys all getting feedback or  
7 is it just me?

8                   MS. PAYERLE: I am a little bit.

9                   MR. JOHNSON: We are getting significant  
10 feedback.

11                  THE COURT REPORTER: If you can just slow  
12 down a little bit, please. And go ahead, and we will try  
13 it again.

14                  MS. PAYERLE: Okay. One category of  
15 discovery that will be ongoing on a rolling basis, for  
16 frankly as long as we are still awaiting trial, is  
17 Mr. Young's calls from the facility. So as long as he  
18 continues to make those, we will continue to produce that  
19 to the defense. So that's one category of discovery that  
20 we be ongoing as long as we're still awaiting trial and  
21 as long as that discovery keeps being created.  
22 Similarly, if any of the defendants post essays or blogs  
23 or things like that in the future, those are things that  
24 we may find and then we would produce.

25                  A second category is the physical drug

1 exhibits that were collected in the search. I've made  
2 all counsel aware that those exhibits, the actual  
3 drugs -- or not in the search, but that were collected in  
4 course of the investigation -- those are being held in a  
5 lab I believe in Miami, but somewhere in Florida. And  
6 those can be made available to counsel for their  
7 inspection, but not until 90 days before trial just  
8 because that's how that evidence moves around the  
9 country. So I can't get that to them until 90 days  
10 before trial. And I have made them aware of that.

11 So in other words, Your Honor, besides  
12 from the two categories of evidence, the drugs exhibits  
13 90 days before trial, and the ongoing yet to be produced,  
14 I believe we've really reached the end of our Rule 16  
15 obligations, and we've done it exactly in line with the  
16 Court's deadline of about mid April, which we set in  
17 anticipation of a September trial date.

18 So I do think -- and I would like the  
19 opportunity, obviously, if Mr. Johnson has sort of  
20 specific complaints, to respond in written format to give  
21 the Court a good sense of that timeline. But, you know,  
22 I just, I don't think discovery issues should hold up  
23 this trial.

24 And if the pandemic does, it does. But,  
25 you know, the discovery issues are non-issues.

1 THE COURT: Okay. Mr. Johnson, do you  
2 wish to say anything else?

3 MR. JOHNSON: I would. First of all, we  
4 set the September trial date in anticipation of the  
5 government having to us by, I believe it was early  
6 December, all of the materials that were seized out of  
7 PreventaGenix, out of the clinic.

8 And candidly, if the government thought  
9 that these materials were important enough to seize out  
10 of the clinic, then we maintain that they're important  
11 enough for us to be able to review and to use, and to see  
12 what they are under Rule 16's provisions under material  
13 to the preparation of the defense.

14 And so the -- and so the Court inquired  
15 about that deadline. And the government agreed they  
16 would have those materials to us by early December. They  
17 made a production in December that included a number of  
18 different things. And it did include these materials  
19 that were unbroken out from their native format.

20 And absent contracting with an e-discovery  
21 company to break them out, to process them, to database  
22 them -- many of us have been involved in e-discovery  
23 cases before. To do that with this item of materials  
24 would cost tens of thousands of dollars in one instance.  
25 As opposed to the government, that may have -- and that

1 does have actually. It's public record that they have  
2 this. Has a contract with, an ongoing contract with a  
3 couple of different -- I think three different  
4 e-discovery hosting companies.

5           So we then got a supplemental production,  
6 and we were continuing to work on all the other materials  
7 that we had already been receiving in the case, from the  
8 government on March 17 that included some cell phone  
9 materials. And once we got in there, we figured out that  
10 those were in native format as well and we couldn't open  
11 them.

12           And so endeavored -- because all the  
13 materials that have been produced to us are not produced  
14 with any sort of detailed index of what we're getting.  
15 Some of the production letters from government are a  
16 little bit more detailed than others. But oftentimes it  
17 will have, for example, you know, we're producing  
18 documents 10,500,000 through 11,000,750. And that's  
19 really what we get.

20           And so the letter that we filed back with  
21 the government on April 22nd was our effort to really  
22 detail what we have been provided. And every time we do  
23 that we discover that there are things that we had  
24 requested that hadn't been provided, such as the search  
25 warrants, yet. And so it has put a tremendous burden on

1 us just to figure out what we had been provided.

2 And so that trial date was set with the  
3 understanding that we would get these materials in  
4 December and be able to use them in December. We don't  
5 have them in a usable format yet. I anticipate we're  
6 going to get them.

7 And I can appreciate the fact that counsel  
8 for the government has these, you know, 15, 16 computers  
9 and other items imaged or databased now, and that they  
10 can search through them. And I did get an e-mail from  
11 Ms. Payerle about an hour before this hearing, hour and a  
12 half before this hearing, offering to do specific  
13 searches for me if I gave her search terms to look at.  
14 And said she would search for Dr. Alperovich's name in  
15 particular, and gave me some examples of things that had  
16 come up.

17 And I can appreciate that they have that  
18 capability. But just under the basic rules of  
19 e-discovery, and the principles of Rule 16.1, we need to  
20 have that capability. Otherwise, we slow things down.

21 And like I said, I'm telling the Court  
22 about this issue from the perspective of timing. I am  
23 going to endeavor on all the issues that I have raised to  
24 see if we can get this taken care of among the parties.

25 But I'm letting the Court know there may

1 come a time very quickly that I'm going to raise this  
2 issue with the Court. For example, of either the  
3 government giving us access to their discovery database,  
4 which Courts have ordered before, or the government  
5 giving us a database, producing a database for the  
6 defense. That way they have produced the discovery in a  
7 searchable format that is consistent with the format that  
8 they are already using. And I think those are the core  
9 principles surrounding e-discovery in criminal cases.

10 So I'm just telling the Court that stuff  
11 with respect to timing.

12 THE COURT: Well, let me just make a  
13 comment. It sounds as if, obviously, there is some  
14 disagreement on the format and the manner in which it has  
15 been produced that may or may not be totally correct, it  
16 may be completely correct. I don't know.

17 But I would -- it sounds to me like you  
18 all have had conversations, have been talking. And it  
19 seems to me that before -- you know, if you can't get it  
20 resolved, the only thing I can suggest to you is file a  
21 motion. Let me see what you are -- then the government  
22 will have the opportunity to respond.

23 Because, I mean, it's great to us talk  
24 about it in this circumstance. But it's very difficult  
25 when we are just going on and saying, well, I've got this

1 problem, I've got this problem. And maybe some of it  
2 hasn't been related to the other side, or maybe it hasn't  
3 been answered by the other side, or something of that  
4 nature, at least orally.

5 And the only way I'm going to be able to  
6 rule on it is by written document. I can't make a  
7 decision today about in whose favor or against whom I  
8 should make a ruling, if I was even asked to. But I'm  
9 not. I'm not going to do that today. There is too many  
10 moving parts here for me to make that determination.

11 So all I can say is you need to talk. And  
12 then if you can't get it resolved, file a motion and I'll  
13 try to take care of it. Okay.

14 MR. JOHNSON: We will do so.

15 THE COURT: Mr. Sanan, if I'm pronouncing  
16 that correctly. I apologize if I'm mispronouncing it.

17 What is your position regarding the trial  
18 date as it presently stands?

19 MR. SANAN: Judge, I agree with Mr.  
20 Ferguson and Mr. Johnson that in all likelihood this  
21 trial may not be able to go that day. My biggest concern  
22 is getting this case back on a schedule where all the  
23 parties are available to try it.

24 I know I've had several trials already  
25 rescheduled. The ones that were all set for June, July,

1 have all been getting kicked into the end of the year and  
2 early next year already. I know Mr. Ferguson's client is  
3 currently in custody.

4 And given that, I think if we are going to  
5 reset this, I think those discussions should start  
6 shortly to make sure the parties are all available, given  
7 the length of this trial, the complexity of this trial,  
8 and just get a date, if it's not going to be a September  
9 date, on the books, so we're not being pushed further out  
10 into next year.

11 That's the concern I have, is getting this  
12 thing, a set date that we hope can go, given the  
13 uncertainty of the pandemic.

14 THE COURT: Well, I have been setting  
15 trials, not as lengthy as this one, but other cases  
16 that -- and as you can image, timing, space, and  
17 everything else all plays into this. And, of course,  
18 your schedules are such too.

19 Ms. Pettigrew, I guess I'll ask you. If  
20 this case, number one, is going to be moved to Memphis,  
21 that presents another issue, because we're talking about  
22 facilities there.

23 There is a whole set of issues that I've  
24 heard some of the Memphis judges talk about. And so --  
25 I'm not going to get into that with you, but that's just

1 to let you know. That's one issue.

2 And then, of course, just everybody's  
3 calendar with what we've got.

4 Ms. Pettigrew, you've got my calendar  
5 there. What does it look like?

6 THE CLERK: How far advanced do you want  
7 me to look first?

8 THE COURT: Well, I mean, this case is  
9 presently set for a two week time period. I'm assuming  
10 that is still -- or is that still the opinion that it's  
11 going to take about two weeks to try?

12 Ms. Payerle, is that your belief?

13 MS. PAYERLE: Yes, Your Honor. And again,  
14 I'll just -- I don't think it's nearly as complicated a  
15 case as my counterparts in the defense believe it is, so  
16 they may have a different opinion. But I can't imagine  
17 it going longer than two weeks.

18 THE COURT: Mr. Ferguson. Mr. Ferguson, I  
19 can't hear you. I'm sorry.

20 MR. FERGUSON: I'm sorry. That was my  
21 fault. I looked down and realized I was on mute.

22 I am hoping two weeks.

23 THE COURT: Mr. Johnson.

24 MR. JOHNSON: I'm going to be surprised if  
25 we get done with the government's proof in two weeks,

1 much less defense proof. I think the last time we were  
2 talking about this in November, if I recall correctly,  
3 the -- I think we all anticipated this could go maybe  
4 even into three weeks. And the Court, if I recall  
5 correctly, was kind of looking at picking a date with  
6 hoping for two weeks and planning for three.

7 MR. SANAN: Judge, that was my  
8 understanding also, that this was going to shoot into  
9 that, potentially shoot into that third week. And so  
10 when we scheduled it, I had actually blocked off all  
11 three weeks.

12 THE COURT: Okay. Well, your memory is  
13 better than mine. I apologize for that.

14 So, Ms. Pettigrew, we're probably talking  
15 about next year, just to be blunt about it, January or  
16 February.

17 MR. FERGUSON: Your Honor, I think I have  
18 reset probably six or seven Federal trials in the last 10  
19 days. Just looking at my calendar, I'm probably going to  
20 be the one that holds us up. So I thought maybe I would  
21 throw a date out there.

22 THE COURT: All right.

23 MR. FERGUSON: I hate to say this, but  
24 February 15th for three weeks.

25 MR. SANAN: Judge, my problem is I just

1 rescheduled a three week trial for January 25th, and  
2 that's in Chicago. Which that will put me into probably  
3 mid to late February at the earliest.

4 MR. FERGUSON: Oh, wow.

5 MS. PAYERLE: Judge, again, from my  
6 perspective, you know, the government is, obviously,  
7 flexible. But I think this is part of the -- this is the  
8 other reason that I might ask the Court to consider, at  
9 least for the time being, keeping that September trial  
10 date. Because we did work mightily last November. And I  
11 believe that was the earliest we all could find on our  
12 schedules last November was this two to three week period  
13 in September. And with just the difficulty of, you know,  
14 busy, competent lawyers trying to find a date, we would  
15 urge that if at all possible we just hang on to that.

16 THE COURT: Well, the problem we have is  
17 we have this elephant in the room that, as Mr. Ferguson  
18 has already mentioned, it puts him behind the eight ball.  
19 It's nothing I can do about it. Nothing you can do about  
20 it.

21 And, frankly, you know, if the flare-up  
22 hit in the fall, what is that going to do with the plans  
23 that we, the Court, might be making as far as trying to  
24 reopen for trials? And that could just throw it -- I'm  
25 not trying to be a doomsday, I'm just saying that it's a

1 possibility.

2 I, frankly, don't see it going -- based on  
3 what I'm hearing today, I don't see it going in  
4 September. That's just -- you know, back in November we  
5 weren't talking about any of the issues which brings us  
6 in this format today. You all would have been here live  
7 if we weren't in the circumstances we are today.

8 So there has been a sea change, I'll have  
9 to say, between last November and now. You know, I think  
10 it probably would behoove me, the Court, to go ahead and  
11 try to get something more firm, with the understanding  
12 that there are all these logistics problems. And  
13 hopefully the parties can resolve some of their issues  
14 with discovery.

15 But, Mr. Johnson, you said your case in  
16 Chicago starts when? When is that going to start?

17 MR. SANAN: Judge, it's my case, Mr.  
18 Sanan. Starting --

19 THE COURT: Oh, I'm sorry. I apologize.  
20 I'm sorry, Mr. Sanan.

21 MR. SANAN: It starts January 25th.

22 THE COURT: Okay. All right.

23 MR. SANAN: And it's anticipated about two  
24 to three weeks.

25 Judge, the other issue I want to bring up,

1     though, is before we set this date, wouldn't we want to  
2     wait to see what happens with the change of venue issue?

3                     Because if we set a date, or we try to get  
4     a date on today, and you then reach out to the Memphis  
5     courthouse, they may put a wrench into it.

6                     MR. FERGUSON: If I may respond to that?

7                     THE COURT: Who is talking?

8                     MR. FERGUSON: This is Mr. Ferguson.

9                     THE COURT: I'm sorry. I couldn't see  
10    your -- I'm looking at five different people on the  
11    screen, six people, and trying to --

12                    MR. FERGUSON: Absolutely understand.

13                    THE COURT: Go ahead.

14                    MR. FERGUSON: Again, as I said, the last  
15    10 days we've been rescheduling everything over here. So  
16    I have a pretty good feeling of where -- it's been about  
17    two days. And the last one I set was two weeks into  
18    January, 1st of January, and we had not yet rolled any of  
19    mine over into February or March.

20                    So I think if we grab a March date, maybe  
21    March 8th or 15th, I think we could be able to -- in all  
22    likelihood, I think we would be able to find one of the  
23    courtrooms over there. We may end up in one of the --  
24    well, not magistrate courtrooms. But there is a Division  
25    7 upstairs that I think Judge McCalla sometimes uses.

1 THE COURT: That would not -- for this  
2 case that would not be tolerable for anybody.

3 MR. FERGUSON: Okay.

4 THE COURT: It really -- I'm not being  
5 facetious. It would not work at all for this case.

6 MR. FERGUSON: Too many people?

7 THE COURT: Yes, sir.

8 MR. FERGUSON: Okay. All right.

9 THE COURT: So we would have to have --  
10 you know, we would have to have -- what we could do, to  
11 pick up on your and somebody else's suggestion, go ahead  
12 and let's get a tentative -- not tentative, but a date,  
13 maybe get the first part of March. And then let me  
14 confer with some of the judges over in Memphis and make  
15 sure that's a doable.

16 Like you said, with this much advanced  
17 notice, it seems to me that would be, it would be doable.

18 MR. SANAN: Judge, I'm available on the  
19 March 15th date that Mr. Ferguson recommended.

20 THE COURT: Who is that?

21 MR. SANAN: This is Mr. Sanan.

22 THE COURT: Okay, Mr. Sanan. Anyone else?  
23 Mr. Johnson?

24 MR. JOHNSON: Did you say -- I'm sorry,  
25 Judge, Mr. Ferguson cut off and so did Mr. Sanan.

1 Did you say March 15th?

2 THE COURT: Right.

3 MR. JOHNSON: That's fine for me and fine  
4 for Mr. Massey as well, Judge.

5 THE COURT: Ms. Payerle.

6 MS. PAYERLE: Just a minute. It seems  
7 I've got my calendar in the wrong year. Hang on.

8 March 15, 2021?

9 THE COURT: Yes, ma'am.

10 MS. PAYERLE: And it would be -- are we  
11 blocking off three weeks just in case Mr. Johnson's  
12 dreams come true?

13 THE COURT: Based on what I'm hearing.

14 MR. JOHNSON: I have other, I have other  
15 dreams that I hope come true.

16 MS. PAYERLE: Okay. I believe I can do  
17 that. That's just fine for me, Your Honor.

18 THE COURT: Mr. Ferguson?

19 MR. FERGUSON: Yes, Your Honor, that would  
20 be fine.

21 THE COURT: Okay. All right. Let's --  
22 that's a Monday. Start March 15th. I will tell -- when  
23 I talk to the Court, I will ask for three weeks so that  
24 if it's rolled into a third week we would not have a  
25 problem with that hopefully.

1 Well, while we're talking about discovery.  
2 I'm hearing different versions of people's positions  
3 here. We need to have a cut off date. I know there was  
4 probably one already established. But now that we have  
5 moved the trial, we need to have a definite cut off date.

6 You all give me suggestions of what you  
7 want.

8 Mr. Johnson, if you want to start.

9 MR. JOHNSON: Your Honor, I was -- I'm  
10 sorry. I didn't mean to overtalk.

11 THE COURT: Go ahead. You're not.

12 MR. JOHNSON: My suggestion is -- and we  
13 actually got a transcript of the report date from back in  
14 November, just because it had been a little bit and we  
15 wanted to figure out what we had all talked about before.

16 And one of the things that we had  
17 discussed doing before, and the Court had suggested, was  
18 that the parties confer on, and see if we can come up  
19 with an agreed scheduling order for the Court, in a case  
20 like this and given the complexity.

21 And we had made some initial steps. Me  
22 and Ms. Payerle had e-mailed back and forth, I think, a  
23 draft, and some thoughts on the draft. And then the  
24 pandemic hit. And so -- and we been focused on some of  
25 these other issues.

1                   So my suggestion to the Court is that if  
2 the Court will give us perhaps a couple of weeks maybe to  
3 see if we can come up with agreement on a schedule for  
4 discovery deadlines and for other deadlines in the case.  
5 And then perhaps we can get with the Court's chambers on  
6 the Court's availability for things like motion hearings  
7 and Daubert hearings.

8                   THE COURT: That's fine --

9                   MR. JOHNSON: That's my suggestion, Your  
10 Honor.

11                  THE COURT: I think that's fine with me,  
12 if everybody else is okay with that. I hear no  
13 objections.

14                  MR. FERGUSON: Yes, Your Honor.

15                  MS. PAYERLE: That's fine --

16                  THE COURT: Okay. Let's do that. Let's  
17 do that.

18                  So two weeks. This is the 21st, so  
19 whatever two weeks from today -- June -- is that June?  
20 Yeah. Would be June 4th or 3rd. I don't know what day  
21 that is. June 4th. Have something to me by June 4th.

22                  MR. FERGUSON: Yes, Your Honor.

23                  THE COURT: Okay. You all just get  
24 together and iron that out, and I'll take a look at it.  
25 Okay.

1 MR. JOHNSON: Thank you, Your Honor.

2 THE COURT: All right. Then what else --  
3 well, as far as -- I think, based upon my -- what  
4 everybody's position here is, I think -- I know Mr.  
5 Johnson said he wanted to talk a little bit more with his  
6 client.

7 But, Mr. Johnson, I frankly think that the  
8 motion to move this to Memphis is probably well taken.

9 Now if you still want to argue with me  
10 about it, I'll be glad to hear from you. But I really  
11 think it's probably the best for all concerned.

12 MR. JOHNSON: And, Your Honor, I just want  
13 to -- candidly, Mr. Massey and I have conferred about  
14 that, and I believe that we're in agreement. And we have  
15 had some discussions back and forth with our client.

16 And we just -- and I understand what the  
17 Court, the Court's likely ruling on that motion. And to  
18 the extent that we feel like we need to lodge any  
19 objection in the record, or to just put in the record  
20 that we consent to it, we'll do that within the next  
21 week.

22 THE COURT: Okay.

23 MR. JOHNSON: I think -- we are -- Mr.  
24 Massey and I are in agreement, we just need to confer  
25 with our client about that.

1 THE COURT: Okay. That's fine. All  
2 right.

3 What else do we need to take up at this  
4 point? We can set another -- if you want another interim  
5 report date to discuss anything other matters, we can do  
6 that. That may be taken care of by the proposed  
7 scheduling order. But I'm available to talk with you at  
8 any time.

9 If you want set up another Skype hearing  
10 or just want to get with me and -- well, either we're  
11 going to set something up or I'll wait to hear from you  
12 on your scheduling order, whatever you want to do.

13 What is your thoughts?

14 MS. PAYERLE: Your Honor, I'm optimistic  
15 we can all come to an agreement on the scheduling order.  
16 To the extent that we can't for some reason, what process  
17 would you like us to follow? Should we just tell the  
18 chambers or --

19 THE COURT: Yeah. Just check with  
20 chambers and I'll set something up for you.

21 MS. PAYERLE: Okay.

22 THE COURT: Okay. All right. Let's do  
23 that.

24 MS. PAYERLE: Thank you, Judge.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Mr. Ferguson, anything else  
2 you want to bring up at this point, sir?

3 MR. FERGUSON: No, Your Honor. Thank you  
4 very much.

5 THE COURT: Mr. Sanan?

6 MR. SANAN: No, Your Honor. Thank you.

7 THE COURT: And I think I've covered  
8 Mr. Johnson and Ms. Payerle.

9 MS. PAYERLE: Yes, sir. Thank you.

10 THE COURT: All right. Okay. Thank you  
11 all. All right.

12 I will let you go this afternoon and wait  
13 to hear from you on the proposed scheduling order. Okay.

14 MS. PAYERLE: Thank you, Judge.

15 THE COURT: Thank you all.

16 (End of Proceedings.)  
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24  
25

1 I, Kristi Heasley, do hereby certify that the  
2 foregoing 43 pages are, to the best of my knowledge,  
3 skill and ability, a true and accurate unredacted  
4 transcript from my stenotype notes in the matter of:  
5 UNITED STATES OF AMERICA

6 VS )  
7 )NO.1:19-cr-10040  
8 )JACKSON, TENNESSEE  
9 )  
10 ALEXANDER ALPEROVICH,  
11 JEFFREY W. YOUNG, JR., and  
12 ANDREW RUDIN  
13 )

14 Dated this 26th day of May, 2020.

15 /s/ Kristi Heasley

16 -----  
17 Kristi Heasley, RPR  
18 Official Court Reporter  
19 United States District Court  
20 Western District of Tennessee  
21 Eastern Division  
22  
23  
24  
25